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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: David S. Colvin

Serial No: 10/605,064

Filed: September 5, 2003

Examiner: Revak, Christopher A.

Group Art Unit: 2131

Confirmation No: 2063

Title: COMPUTER READABLE STORAGE MEDIUM FOR ENHANCING LICENSE COMPLIANCE OF SOFTWARE/DIGITAL CONTENT INCLUDING SELF-ACTIVATING/SELF-AUTHENTICATING SOFTWARE/DIGITAL CONTENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants hereby request review of the final rejection mailed August 3, 2007.

No amendments are being filed with this request.

This request is being filed concurrently with a Notice of Appeal.

The review is requested for the reasons stated on the attached sheets of no more than 5 pages.

Reason(s) For Requesting Pre-Appeal Brief Review

Applicant's Claims 1-88 stand rejected under 35 USC §102(b) as being anticipated by Ananda (US 5,495,411). In Applicant's response to the first Office Action, Applicant identified elements of nearly every independent and dependant claim that were not disclosed in Ananda and requested reconsideration of the rejection.

In the final Office Action mailed August 3, 2007, the Examiner stated indicated that Applicant's arguments were considered but not deemed persuasive. However, the Examiner also stated that Applicant's arguments failed to comply with 37 CFR 111(b) because they amounted to a general allegation that the claims were patentable without specifically pointing out how the language of the claims distinguishes them from the references. Applicant respectfully disagrees.

In the response to the first Office action, Applicant details claim by claim in 10 pages of remarks/argument what element of each claim or related group of claims is not shown in the prior art relied upon by the Examiner. For example, in the response that the Examiner indicated did not comply with 37 CFR 111(b), Applicant stated:

As per claim 2, Ananda does not disclose any feature that is self authenticating and self activating in conjunction with an authorized representative located on or in the user device as claimed. Ananda requires continuous communication with a remote authorized representative to generate authorization verification passwords and is therefore not self activating and self authenticating as disclosed and claimed by Applicant.

As per claim 6, the authorization verification message and the password it contains are not embedded within a file of the software as claimed. Ananda clearly states that the authorization verification password is generated after distribution of the software and therefore can not be embedded as claimed by Applicant, particularly since it relies on the transfer time of the software.

As per claim 8, the authorization verification password may be encrypted, but is not generated prior to distribution of the software as required. Similarly, the header module and/or rental security manager

is associated prior to distribution, but is not encrypted. As such, neither meets Applicant's claim limitations.

Similarly detailed arguments are made for claims 10-13, 19-20, 23-25, 29, 33, 34, 36, 37, 42-43, 46, 47, etc. None of which have been addressed by the Examiner.

As also described in the previously filed response, Ananda '411 does not disclose software with an identifier that triggers an authentication or authorization process as disclosed and claimed by Applicant. The Examiner cites various passages from Ananda that relate to the header software and the incorporated rental security manager 321 that generate authorization verification passwords. However, it is not clear from the rejection how these features are being applied to various elements of Applicant's claims. In particular, it is not clear which element the Examiner is interpreting as the "identifier". It appears from the rejection of various claims that the Examiner's interpretation is necessarily inconsistent in rejecting an independent claim and its corresponding dependent claims. For example, it appears the Examiner is interpreting the header module as the identifier associated with the software, but also as the authorized representative entity that detects the identifier associated with the software in rejecting claim 1. This interpretation appears to change in the rejection of dependent claims 4-8 where the cited passages refer to the authorization verification password generated by the rental security manager, such that the Examiner is indicating that the authorization verification password is now the element that anticipates Applicant's claimed "identifier", which is improper.

The Examiner is respectfully requested to clarify the elements of Ananda that anticipate each element of Applicant's claims rather than reciting the entire claim followed by a citation to multiple columns/lines in Ananda that purportedly anticipate all the elements of the claim to facilitate Applicant's understanding and analysis of the Examiner's position. For example, Ananda discloses a user password that is associated with a registration database of user information, a header module that includes a rental security manager having modules to generate authorization verification passwords, perform encryption/decryption, terminate application execution, etc. The Examiner is respectfully requested to identify which of these elements is purported to anticipate Applicant's claimed identifier or plurality of identifiers, which element anticipates the authorized representative entity that detects the identifier, and how the authorized representative detects the identifier.

Similarly, the Examiner is requested to identify which feature of Ananda anticipates Applicant's registration information associated with a user device, etc.

While the Examiner has been very accommodating in conducting various telephonic interviews to discuss these issues in general, Applicant respectfully requests that the Examiner directly address Applicant's arguments and clarify the interpretation of Ananda with respect to each rejected claim and its elements so that Applicant can make an informed decision of how to best proceed to advance the prosecution of this application.

Respectfully submitted:



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